

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 392

INTRODUCER: Senator Haridopolos

SUBJECT: Timeshare Resort Taxation

DATE: March 10, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Rhea	RI	Favorable
2.	_____	_____	CM	_____
3.	_____	_____	FT	_____
4.	_____	_____	WPSC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill clarifies the laws governing state and local taxes due from timeshare transactions and from transient stays at timeshare resorts. The bill provides that the tourist development tax, the tourist impact tax, the transient rentals tax, and the convention development tax are applicable to transient stays at timeshare resorts.

The bill specifies the types of transactions that are not taxable subject to the tourist development tax, the tourist impact tax, the transient rentals tax, and the convention development tax. The exempted transactions include timeshare exchanges, fees charged by a third party to facilitate a timeshare exchange, and inspection packages. Inspection packages are a timeshare marketing practice in which the seller or operator of a timeshare offers a one-time inspection privilege package to prospective timeshare buyers.

The bill includes mobile home parks, recreational vehicle parks, and condominiums as the types of facilities that may be subject to a transient rental tax. These types of facilities are currently specifically listed as the types of facilities that are subject to the local option tourist development tax, the tourist impact tax, and the convention development tax.

The bill provides an effective date of July 1, 2009. The bill further provides that it is intended to be clarifying and remedial in nature, and does not provide a basis for assessments of tax, or refunds of tax, for periods prior to July 1, 2009.

This bill substantially amends the following sections of the Florida Statutes: 125.0104, 125.0108, 212.03, and 212.0305.

II. Present Situation:

Taxation of Transient Rentals

Transient rentals are potentially subject to the following taxes:

1. The local option tourist development tax under s. 125.0104(3)(a), F.S., which provides that the tax is levied on the “total consideration charged for such lease or rental.” The tourist development tax may be levied at the rate of 1 or 2 percent.
2. The local option tourist impact tax under s. 125.0108, F.S., which is levied at the rate of 1 percent of the total rental charged.
3. The transient rentals tax under s. 212.03, F.S. The transient rental tax is levied in the amount of 6 percent of the total rental charged for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.
4. The convention development tax under s. 212.0305, F.S. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3 percent (Volusia County).

Counties may increase the tourist development tax under s. 125.0104, F.S., with a one cent tax on transient rentals under s. 125.0101(3)(d), F.S. An additional one percent tax may also be imposed by counties under s. 125.0104(3)(m)2., F.S., which high tourism impact counties are authorized to levy for professional sports facilities or tourism promotion.

Timeshares

Chapter 721, F.S., provides for regulation of the offering, sale, management, and operation of real and personal property timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state. A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation, prior to offering the timeshare plan to the public.¹

A timeshare interest is a form of ownership of real property. The real property is typically a condominium unit or a cooperative unit. A timeshare property is typically a resort in which multiple parties hold the right to use the property. Each owner of a timeshare interest is allotted a period of time (typically one week) in which they may use the property.

¹ Section 721.07, F.S.

Section 721.05(34), F.S., defines a “timeshare estate” to mean:

a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof. The term shall also mean an interest in a condominium unit pursuant to s. 718.103, an interest in a cooperative unit pursuant to s. 719.103, or an interest in a trust that complies in all respects with the provisions of s. 721.08(2)(c)4., provided that the trust does not contain any personal property timeshare interests. A timeshare estate is a parcel of real property under the laws of this state.

Section 721.05(16), F.S., defines a timeshare “exchange program” to mean:

any method, arrangement, or procedure for the voluntary exchange of the right to use and occupy accommodations and facilities among purchasers. The term does not include the assignment of the right to use and occupy accommodations and facilities to purchasers pursuant to a particular multisite timeshare plan's reservation system. Any method, arrangement, or procedure that otherwise meets this definition, wherein the purchaser's total contractual financial obligation exceeds \$3,000 per any individual, recurring timeshare period, shall be regulated as a multisite timeshare plan in accordance with part II [of ch. 721, F.S.]

Section 721.05(37), F.S., defines the term “timeshare license” to mean “a right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.”

Section 721.05(39), F.S., defines a “timeshare plan” to mean:

any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years. The term “timeshare plan” includes:

- (a) A “personal property timeshare plan,” which means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and
- (b) A “real property timeshare plan,” which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

According to representatives for the timeshare industry, the term “timeshare license” is a broad term and includes all non-ownership interests in a timeshare which do not have a real property fee interest in the timeshare estate, such as a membership agreement, a rental agreement, or an agreement to use an accommodation.

Taxation of Timeshares

Timeshares are treated in the same manner as any other real estate transaction for purposes of taxation. However, there is uncertainty regarding the application of transient rental taxes to transient stays at timeshares, timeshare exchanges, rentals, fees charged by third parties to facilitate a timeshare exchange, or other similar activities.

According to representatives for the timeshare industry, timeshare developers have historically collected and remitted sales taxes and tourist development taxes on timeshare units held out for rental to the general public. However, this practice is not uniform and timeshare owners have collected taxes on some transactions and not others leading to confusion in the timeshare industry and local governments. The issue is not explicitly addressed in the Florida Statutes.

Taxation of Timeshare Inspection Packages

A timeshare “inspection package” is a timeshare marketing practice in which the seller or operator of a timeshare offers a one-time inspection privilege package to prospective timeshare buyers. The prospective buyers pay for the inspection package and acquire points for use of a timeshare within a twelve-month period. The money spent on the inspection package can be credited towards the future purchase price of a timeshare. Inspection packages may be purchased anywhere in the United States, but the inspection package may be used anywhere in which the seller has a timeshare property that is part of its inspection package program.

In *Broward County v. Fairfield Resorts, Inc.*,² the Fourth District Court of Appeals ruled that timeshare inspection packages were not subject to the local option tourist development tax because “the plain wording of these tourist development provisions [s.125.0104(3), F.S.] do not include either timeshares or inspection packages. Indeed, timeshares and inspection privilege packages did not exist when the statute and ordinance were enacted.”³ The court stated that “[i]t is a fundamental rule of construction that tax laws are to be construed strongly in favor of the taxpayer and against the government and that all ambiguities or doubts are to be resolved in favor of the taxpayer.”⁴

III. Effect of Proposed Changes:

The bill amends s. 125.0104(3), F.S., relating to the local option tourist development tax, s. 125.0108(1), F.S., relating to the tourist impact tax, s. 212.03, F.S., relating the transient rentals tax, and s. 212.0305, F.S., relating to the convention development tax, to include timeshare resorts within the list of the types of occupancies of living quarters or accommodation that are subject to these taxes. The amendments to each of these sections are identical.

The bill provides that the amount of each tax is based on the consideration paid for the occupancy in the county. The tax must be collected on the last day of the occupancy, unless the consideration is applied to the purchase of a timeshare estate.

² *Broward County v. Fairfield Resorts, Inc.*, 946 So.2d 1144 (Fla. 4th DCA 2007).

³ *Id.* at 1147.

⁴ *Id.*

The bill specifies that the following types of occupancies of an accommodation or transactions are not subject to taxation under ss. 125.0104(3), 125.0108(1), 212.03, and 121.0305, F.S.:

- The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program;
- The occupancy of an accommodation by the owner of a timeshare interest or the nonpaying owner's guest;
- A membership or transaction fee paid by a timeshare owner that does not provide the right to occupy any specific timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program.

The bill also provides that the consideration paid for the purchase of a timeshare license in a timeshare plan is rent subject to taxation. This provision in the bill is consistent with rule 12A-1.061(3)(h).14, F.A.C., of the Department of Revenue which provides that “consideration paid under a timeshare license, as defined in Section 721.05, F.S., are rental charges or room rates and is subject to tax.”

The bill also amends s. 212.03, F.S., to include mobile parks, recreational vehicle parks, and condominiums as the types of facilities that may be subject to a transient rentals tax. These types of facilities are currently specifically listed as the types of facilities that are subject to the local option tourist development tax under s. 125.0104(3)(a), F.S., the tourist impact tax under s. 125.0108(1), F.S., and the convention development tax under s. 212.0305, F.S. This bill would confirm the transient rental tax provision in s. 212.03, F.S., to the other tax provisions.

The bill provides an effective date of July 1, 2009. The bill further provides that it is intended to be clarifying and remedial in nature, and does not provide a basis for assessments of tax, or refunds of tax, for periods prior to July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who purchase a transient accommodation at a timeshare resort may have to pay a local option tourist development tax, a tourist impact tax, and/or a convention development tax. Persons who purchase a transient accommodation at a mobile park, recreational vehicle park, and condominium may be subject to a transient rental tax.

C. Government Sector Impact:

The Revenue Estimating Conference determined that the provisions of this bill may have a positive fiscal impact of \$1.1 million annually.

According to the Department of Revenue, it would have to produce a two-page, four-sided tax information publication to be sent to hotels, timeshares, and other transient renters, including 21,525 condominium and 600 timeshare resorts, at a cost of \$25,651.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.